

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

July 3, 2018

Elisabeth A. Shumaker  
Clerk of Court

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RICHARD Q. GUNN,

Plaintiff - Appellant,

v.

DENNIS GORDON and RICHARD  
GARDEN,

Defendants - Appellees.

No. 17-4174  
(D.C. No. 2:13-CV-00659-DN)  
(D. Utah)

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**ORDER AND JUDGMENT\***

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Before **BACHARACH**, **MURPHY**, and **MORITZ**, Circuit Judges.

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Mr. Richard Q. Gunn is a state prisoner who sued under 42 U.S.C. § 1983 for cruel and unusual punishment, inadequate medical care, deprivation of due process, and denial of equal protection. On all claims, the district court ordered dismissal or granted summary judgment to the defendants. Mr. Gunn appeals, contending that he has a viable claim under

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\* The parties agree to submission on the briefs, and oral argument would not materially aid our consideration of the appeal. Thus, we have decided the appeal based on the briefs. *See* Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G).

Our order and judgment does not constitute binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel. But the order and judgment may be cited for its persuasive value under Fed. R. App. P. 32.1(a) and 10th Cir. R. 32.1(A).

the Americans with Disabilities Act and that his counsel was ineffective. We reject both contentions.

### **I. Americans with Disabilities Act**

For the first time on appeal, Mr. Gunn alleges a violation of the American with Disabilities Act. *See* 42 U.S.C. § 12132. But Mr. Gunn waived this claim by omitting it in any of the complaints filed in district court. *J.V. v. Albuquerque Pub. Schs.*, 813 F.3d 1289, 1299 (10th Cr. 2016).

### **II. Ineffective Assistance of Counsel**

Mr. Gunn also claims ineffective assistance of counsel based on his counsel's unfamiliarity with Title II of the Americans with Disabilities Act. This claim is invalid because the constitutional right to effective assistance of counsel does not apply in civil cases. *MacCuish v. United States*, 844 F.2d 733, 735 (10th Cir. 1988); *see also Beaudry v. Corrs. Corp. of Am.*, 331 F.3d 1164, 1169 (10th Cir. 2003) (“[P]laintiffs have no Sixth Amendment right to counsel in a civil case.”).

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Having rejected both appellate arguments, we affirm.

### **III. Leave to Proceed In Forma Pauperis**

Although we affirm, we must address Mr. Gunn's motion for leave to proceed in forma pauperis. For leave to proceed in forma pauperis, Mr. Gunn must show that he

- is unable to pay the filing fee and
- brings the appeal in good faith.

28 U.S.C. § 1915(a)(1), (a)(3).

Mr. Gunn satisfies both requirements. He lacks sufficient funds to prepay the filing fee, and we have little reason to question Mr. Gunn's good faith. Therefore, we grant leave to proceed in forma pauperis.

Entered for the Court

Robert E. Bacharach  
Circuit Judge